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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ALEXANDER N. and AMY M.
9 SOUSIE,

10 Plaintiffs,

11 v.

12 ALLSTATE INDEMNITY COMPANY,

13 Defendant.

CASE NO. C17-5078 BHS

ORDER DENYING
DEFENDANT’S MOTIONS

14 This matter comes before the Court on Defendant Allstate Indemnity Company’s
15 (“Allstate”) motion to disqualify Plaintiffs’ counsel (Dkt. 93) and motion to strike
16 defense counsel as a witness or, in the alternative, for clarification (Dkt.106). The Court
17 has considered the pleadings filed in support of and in opposition to the motions and the
18 remainder of the file and hereby denies the motions for the reasons stated herein.

19 **I. PROCEDURAL AND FACTUAL BACKGROUND**

20 In early February 2018, the parties agreed to mediation through the Court’s
21 mediation program. On February 21, 2018, Plaintiffs Alexander and Amy Sousie’s
22 (“Sousies”) counsel Matthew Edwards (“Edwards”) sent Allstate’s counsel Elyse O’Neill

1 (“O’Neill”) a completed Request for Pro Bono Mediation. Dkt. 95-2. Where the
2 document requests a reason for the parties’ financial hardship, Edwards stated that
3 “Plaintiffs are a married couple with 5 children who would incur a financial hardship if
4 required to pay for mediation.” *Id.* On February 23, 2018, O’Neill returned a signed
5 copy of the form with a handwritten annotation that “Defendant Allstate does not
6 comment or endorse Plaintiffs’ request for pro bono mediation.” Dkt. 95-3.

7 On February 28, 2018, Edwards submitted a request for mediation without
8 Allstate’s alteration and signed it on behalf of O’Neill. Dkt. 95-4. On March 7, 2018,
9 Allstate’s counsel Rick Wathen (“Wathen”) sent Edwards a letter informing him that he
10 failed to submit the copy of the form that was signed by O’Neill. Dkt. 94-1. Wathen
11 stated that Edwards “apparently executed [the form] on behalf of Ms. O’Neill without her
12 consent and without advising the Court of Allstate’s concerns.” *Id.* Wathen considered
13 Edwards’s “conduct to be an egregious violation of [Edwards’s] ethical obligations.” *Id.*

14 In response to Wathen’s letter, Edwards declares that he immediately contacted
15 the court clerk to confirm what had been submitted. Dkt. 102, ¶ 9. The clerk informed
16 Edwards that she only received the form that was signed by Edwards on behalf of
17 O’Neill. *Id.* Edwards told the clerk that the document he submitted was not the complete
18 set of documents, and he immediately emailed the clerk a copy of the form with O’Neill’s
19 actual signature and Allstate’s position on the Sousies’ request for pro bono mediation.
20 *Id.* ¶¶ 9–10. Edwards then emailed Wathen explaining that, although he gave his staff
21 both forms to submit, his staff incorrectly submitted only the form signed by Edwards on
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1 | behalf of O'Neill. *Id.* ¶ 11. Edwards also apologized for the “unintentional error in
2 | failing to mail the entirety of the document.” *Id.*

3 | On April 12, 2018, Allstate filed a motion to disqualify Edwards due to his
4 | “forgery” of O'Neill’s signature. Dkt. 93. On April 23, 2018, the Sousies responded.
5 | Dkt. 101. On April 27, 2018, Allstate replied. Dkt. 103.

6 | Regarding Allstate’s other motion, the Court concluded that the Sousies could
7 | depose Wathen as a fact witness. Dkt. 90. On April 16, 2018, the Court denied Allstate’s
8 | motion for reconsideration concluding in relevant part that “[e]ven if Mr. Wathen is
9 | called as a witness, he is not automatically disqualified from representing Allstate.” Dkt.
10 | 99. On April 27, 2018, Allstate filed a motion to strike Wathen as a fact witness or, in
11 | the alternative, clarify Wathen’s role moving forward. Dkt. 106. On May 14, 2018, the
12 | Sousies responded. Dkt. 117. On May 18, 2018, Allstate replied and improperly
13 | submitted almost seventy pages of evidence in support of its reply. Dkts. 141, 142;
14 | *Docusign, Inc. v. Sertifi, Inc.*, 468 F. Supp. 2d 1305, 1307 (W.D. Wash. 2006) (“It is well
15 | established that new arguments and evidence presented for the first time in Reply are
16 | waived.”).

17 | **II. DISCUSSION**

18 | **A. Edwards**

19 | Allstate provides no authority for the proposition that the Court should disqualify
20 | an attorney for the alleged forgery of a document requesting mediation. As counsel for
21 | Allstate should know, forgery requires “an intent to injure or defraud” RCW
22 | 9A.60.020. In order to determine Edwards’s intent consistent with due process, the Court

1 must hold an evidentiary hearing. The Court declines to do so. Even if the Court
2 considered a hearing, Allstate fails to elaborate on its request to “disqualify” Edwards. It
3 is unclear whether Allstate requests that Edwards be disqualified from representing the
4 Sousies or disqualified from appearing in this Court. Allstate’s counsel did cite to
5 disciplinary proceedings initiated by the Washington State Bar Association (“WSBA”).
6 Allstate also asserts that it has reported Edwards to the WSBA. As such, if the WSBA
7 suspends Edwards’s bar license while this proceeding is ongoing, then the Court will take
8 action. Allstate, however, fails to allege any facts that rise to the level of conduct by
9 attorneys that have been suspended or disbarred. Instead, Allstate has simply filed a
10 motion that wastes the Court’s and Edwards’s resources in an apparent attempt to slander
11 Edwards or undermine his credibility with the Court. Regardless, no grounds exist to
12 disqualify Edwards, and the Court denies Allstate’s motion.

13 **B. Wathen**

14 Allstate’s other meritless motion is based on its position that *Cedell v. Farmers*
15 *Ins. Co. of Washington*, 176 Wn.2d 686 (2013), is inapplicable in this case. Dkt. 106. At
16 this point, Allstate may assert that position with the Ninth Circuit because the Court
17 declines to reconsider its conclusions that *Cedell* is applicable and that Wathen is a *fact*
18 witness in this matter.¹ Allstate should recognize that *Babai v. Allstate Ins. Co.*, C12-
19 1518 JCC (W.D. Wash.), is a more persuasive authority than *Alvarez v. Allstate Ins. Co.*,
20 198 Wn. App. 1053 (2017). In *Alvarez*, the plaintiff sued Allstate as well as Wathen and

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22 ¹ Now that the trial has been continued, Allstate may file for a writ of mandamus and
seek a stay of this matter from that court.

1 his firm. *Id.* at *1. The trial court concluded that the claims against Wathen and his firm
2 were frivolous and imposed sanctions. *Id.* at *2. The Sousies have not brought any
3 claims against Wathen or his firm, and, therefore, *Alvarez* is not persuasive authority for
4 any issue in this matter.

5 To the extent that Allstate requests clarification on Wathen’s role going forward,
6 the only clarification necessary at this point is that the Court expects Wathen to honor his
7 ethical obligations pursuant to the rules of professional conduct and the case law
8 interpreting those rules. It should be noted that this is not the first instance wherein
9 Wathen was in this position, and, as previously found by Judge Coughenour regarding
10 the almost identical situation, “[t]hese arguments appear not to be made in earnest, but
11 the byproduct of highly questionable gamesmanship.” *Babai v. Allstate Ins. Co.*, C12-
12 1518 JCC (W.D. Wash. Apr. 28, 2015) (order denying motion to continue trial based
13 upon Allstate’s argument that it had no “reasonable belief” that Wathen would be called
14 as a witness). If the Sousies file a motion to disqualify or limit Wathen’s role as defense
15 counsel because he is a fact witness, the Court will address the merits of the motion. At
16 this point, however, the Sousies are improperly seeking relief in a responsive brief and
17 Allstate counters in its reply with additional improperly submitted evidence. Because the
18 trial has been continued for unrelated reasons, the parties have the time and opportunity
19 to present the issue in a manner consistent with due process.

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Dated this 22nd day of May, 2018.


BENJAMIN H. SETTLE
United States District Judge